been discarded. See 2 WILLOUGHBY, CONSTITUTIONAL LAW, § 621. It is said the question "must be determined by a consideration of the nature of the case as presented on the whole record." *In re Ayers*, 123 U. S. 443. Obviously a suit against an officer for invasion of private rights, though done under color of office, is against him personally. *Scully* v. *Bird*, 209 U. S. 481. This is true also where those acts are done in execution of unconstitutional legislation. *Osborn* v. *Bank of United States*, 9 Wheat. (U. S.) 738; *Poindexter* v. *Grenshaw*, 114 U. S. 270. Suit to recover property wrongfully taken or withheld by an officer is against him *qua* wrongful possessor, and hence is maintainable. *United States* v. *Lee*, 106 U. S. 196; *Morrill* v. *Am. Reserve Bond Co.*, 151 Fed. 305. *Cf. Rolston* v. *Missouri Fund Com'rs*, 120 U. S. 390. But if the property loses its identity, *e. g.*, taxes collected unlawfully and paid into the treasury, the theory of the action changes from a suit to recover property to one for the performance of an implied obligation to pay — an obligation of the state. *Smith* v. *Reeves*, 178 U. S. 436. Though the officers are under a duty to carry out the obligations of the state, that duty, as in any case of agency, extends only to the principal, the state, and not to third persons. Suit against the officers to secure performance or damages for nonperformance of those obligations must necessarily proceed on the theory that it is against the state and as such is not maintainable. *Louisiana* v. *Jumel*, 107 U. S. 711; *Murray* v. *Wilson Distilling Co.*, 213 U. S. 151. The principal case alleges capricious misconduct, whereby plaintiff's property has been destroyed. The decision conforms with the general principle that if a person acting affirmatively exercises a power in wanton disregard of the rights of others, he becomes an individual trespasser, even though purporting to act in the capacity of an officer. See GUTHRIE, THE FOURTEENTH AMENDMENT, 176.

SURETYSHIP — SURETY'S DEFENSES — PAYMENT OF DEBT OWED BY CREDITOR TO PRINCIPAL DEBTOR. — By statute a landlord had a lien on crops raised by the tenant, and could follow the crops into the hands of a purchaser. The defendant purchased the crops of a tenant who had not paid his rent. Subsequently, the landlord employed the tenant and paid him as wages a sum greater than the amount of the rent. Then the landlord tried to enforce his lien against the purchaser. *Held*, that he could not recover. *Scott & Garrett* v. *Green River Lumber Co.*, 77 So. 309 (Miss.).

When one person owns property which is security for the debt of another, the property is in effect surety for the debtor. See 1 BRANDT, SURETYSHIP AND GUARANTEE, § 43. The question in this case is whether the payment of wages to the principal debtor by the creditor discharges the surety. Release of security by the creditor discharges *pro tanto* his claim against the surety. *Henderson* v. *Huey*, 45 Ala. 275; *Kirkpatrick* v. *Howk*, 80 Ill. 122. Mere failure, however, on the part of the creditor to sue or to take other steps to enforce the obligation does not destroy the liability of the surety. *Schroeppell* v. *Shaw*, 3 N. Y. 446; *Brick* v. *Freehold National Bank*, 37 N. J. L. 307. The payment by the creditor of a debt owed by him to the principal debtor, instead of using it as a set-off lies somewhere between these two groups of cases. It is generally held that if a creditor bank fails to satisfy a debt out of the general deposits of the principal, but permits him to withdraw the deposits, that does not discharge the surety. *National Bank* v. *Peck*, 127 Mass. 298. See *Strong* v. *Foster*, 17 C. B. 201, 224. *Contra*, *McDowell* v. *Bank of Wilmington*, 1 Harr. (Del.) 369. *A fortiori*, it would seem that for an ordinary creditor thus to pay the debtor would not destroy his right against the surety, for whereas a bank has the right to appropriate money due on a general deposit to the payment of a depositor's obligations, an ordinary creditor has no right to make such a set-off, but must sue or wait to be sued, and let the court make the set-off. See *White's Adm'r* v. *Life Association of America*, 63 Ala. 419, 430. The principal case is not in

accord with other cases on this point. *Glazier* v. *Douglass*, 32 Conn. 393; *Hollingsworth* v. *Tanner*, 44 Ga. 11; *Baubien* v. *Stoney*, Speer's Eq. (S. C.) 508.

TORTS — INTERFERENCE WITH BUSINESS OR OCCUPATION — INJUNCTION AGAINST INJURY TO CONTRACT RIGHT BY THIRD PARTY. — An Ohio corporation was under contract to furnish complainant, a New Jersey corporation, with certain machines. The defendants, striking employees of the Ohio company, by force and intimidation prevented other employees from working, thus incapacitating the company from performing its contract with complainant. No injury to the New Jersey corporation was intended or contemplated. *Held*, that the New Jersey corporation has a separate cause of action against defendants, and an injunction will issue at its suit. *Niles-Bement-Pond Co.* v. *Iron Molders' Union*, 246 Fed. 851.

For a discussion of this case, see Notes, page 1019.

TRUSTS — *CESTUI'S* INTEREST IN THE *RES* — RIGHT TO SUBSCRIBE FOR STOCK AN ACCRETION TO CAPITAL. — Stock was held in trust, the income to be paid to a life tenant, the *corpus* on his death to go to a remainderman. The corporation increased its capital, and offered the new issue of stock to its stockholders at par, in proportion to their holdings, no dividend accompanying this right to subscribe. The trustee, having sold this right, brought an action to determine the interests of the life tenant and remainderman in the proceeds. *Held*, that the proceeds are an accretion to the capital, and not income. *Baker* v. *Thompson*, 168 N. Y. Supp. 871.

It seems clear that if the trustee holds an available fund in addition to the stock, on the same trust, an application of the fund to the purchase of the new issue would be merely a change in the form of the trust *res*. Any profit realized by this purchase could not be considered income. *Hyde* v. *Holmes*, 198 Mass. 287, 84 N. E. 318. The same is true where stock is bought and sold at a profit, the increase remaining part of the *corpus*. *In re Robert's Will*, 82 N. Y. Supp. 805. If, then, instead of subscribing to the new issue at par, the trustee sells this right, it would follow that the sum realized becomes part of the *corpus* of the trust. *In re Kernochan*, 104 N. Y. 618, 11 N. E. 149; *Greene* v. *Smith*, 17 R. I. 28, 19 Atl. 1081. The rule is the same in England. *Sanders* v. *Bromley*, 55 L. T. (N. S.) 145. The court in the principal case very properly points out, however, that the life tenant is entitled to the interest on the proceeds. See *Atkins* v. *Albree*, 12 Allen (Mass.), 359.

TRUSTS — VESTING OF *CESTUI'S* RIGHTS ON DISCHARGE IN BANKRUPTCY — EFFECT AGAINST CREDITORS. — A testator bequeathed money in trust to pay the income to his son for life with a remainder over to others, subject to the condition that the son should receive the principal when he became able to pay his just debts from resources other than the principal. The son went into voluntary bankruptcy and received his discharge. The trustee in pursuance of a decree of the court paid him the principal. Thereafter the estate of the bankrupt was reopened, and the trustee in bankruptcy sought to reach the fund. *Held*, that the right to the fund did not pass to the trustee in bankruptcy under section 70 *a* (5) of the Bankruptcy Act. *Hull* v. *Farmers' Loan & Trust Co.*, 245 U. S. 312.

English courts have uniformly held void a provision in either a will or deed that a life interest therein appointed shall not be subject to the claims of creditors. *Brandon* v. *Robinson*, 18 Ves. 429; *Graves* v. *Dolphin*, 1 Sim. 66; *Snowden* v. *Dales*, 6 Sim. 524. But the trustee may be given an arbitrary discretion in applying the fund. *Chambers* v. *Smith*, 3 A. C. 795. Or provision may be made for forfeiture of the interest upon bankruptcy. *Manning* v. *Chambers*, 1 De G. & Sm. 282; *Hatton* v. *May*, 3 Ch. D. 148; *In re Bullock*,